IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCES Nos. 73, 73A, 73B, 73C & 73D of 1987

with

INCOME TAX REFERENCES Nos.100 & 100A of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

SHARAD NARANDAS PATEL

Appearance:

MR. Bharat Naik for Manish R.Bhatt, for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.A.PUJ

Date of decision: 14/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

The original I.T. Reference no.73 of 1987 which related to five assessment years, namely, 1978-79 to 1982-83 arising out of five appeals (ITA nos.1842 to 1846) decided by the Tribunal is ordered to be split up into five References. They are numbered as I.T. References 73, 73A, 73B, 73C and 73D of 1987 for the respective years 1978-79 to 1982-83.

2. The Tribunal has referred the following question in these References for the opinion of this Court:

"Whether in law and on facts, the income of the Sharad Family Trust was taxable in the hands of the assessee?"

3. Reference no.100 of 1987 (arising from two appeals 122 and 123 of 1985) is directed to be split up into two References, namely, 100 and 100A of 1987 in respect of the two assessment years 1978-79 and 1979-80 respectively. The Tribunal has referred the following question for the opinion of the High Court in those References:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the income of the assessee trust was not liable to be included in the individual income of Shri Sharad Narandas under Section 60 of the Income-tax Act, 1961?"

4. In References nos.73, 73A, 73B, 73C and 73D of 1987, the assessee is the individual who was the Managing Trustee of Sharad Family Trust, the beneficiaries of which are the sons of the assessee. According to the Income-Tax Officer, the entire business and administration of the Trust was being handled by the assessee and the other trustees had no knowledge of the affairs of the Trust whatsoever. It was held that the entire income of the Trust belonged to the Assessee and was brought to tax accordingly. The C.I.T. (Appeals), however deleted the addition following its decision in the case of Sharad Family Trust (I.T. Appeals nos.178 to 180) decided on 6-6-1983. The Tribunal held that the income of the Trust was to be assessed in the hands of the Trust and not the managing trustee who was the assessee in that case and confirmed the order of the C.I.T.(Appeals).

5. In the order from which the Income-Tax Reference nos.100 & 100A of 1987 arise, in the case of the assessee Trust, the Tribunal confirmed the order of the Appellate Assistant Commissioner by which he had directed the protective assessment made by the I.T.O in the hands of the Trust to be made substantive on the finding that the business genuinely belonged to the Trust.

6. It is pointed out to us that in respect of the earlier assessment years 1975-76 to 1977, in the case of assessee Trust, the Tribunal had referred to the High Court for its opinion in I.T. Reference no.63 of 1984 (arising out of I.T. Appeals nos.178 to 180), the question as to whether the income of the assessee Trust was not liable to be included in the individual income of the assessee who was the Managing Trustee under Section 60 of the Income-Tax Act. The Division Bench of this Court (Coram: P.R. Gukulakrishnan,C.J., & G.T. Nanavati,J.) by Their order dated March 27, 1987 upheld the findings of the Tribunal following the earlier decision of the High Court in K.T.Doctor v. C.I.T. reported in 124 I.T.R 501 and answered the question in favour of the assessee and against the Revenue.

7. In K.T. Doctor vs. C.I.T. (supra), this Court held that the provisions of Section 60 of the Income-Tax Act, 1961 could not be invoked at all in that case since the Trust was created not by the assessee but by his mother. In the present case, the Trust was created by Ramanbhai Narandas on 18-6-1974, who was related to the beneficiaries. The Trust was admittedly not created by the Managing Trustee. In this view of the matter, applying the decision of this Court in I.T.R no.63 of 1984 decided on 27th March, 1987 in the case of assessee Trust, we answer the question referred to the High Court in the above References as under:

(i) In I.T. References nos.73, 73A, 73B, 73C and 73D of 1987, we hold that the income of Sharad Family Trust was not taxable in the hands of the assessee Sharad Narandas who was its Managing Trustee and answer the question referred in the negative in favour of the assessee and against the Revenue.

(ii) In I.T. References nos.100 and 100A of 1987, we hold that the Tribunal was right in holding that the income of the assessee Sharad Family Trust was not liable to be included in the individual income of the Managing Trustee Sharad Narandas under Section 60 of the Income-Tax Act, 1961 and the question referred is, therefore, answered in the affirmative in favour of the

assessee Trust and against the Revenue.

All these References stand disposed of accordingly with no order as to costs.

(R.K.Abichandani,J.)

(K.A.Puj,J.)

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